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6 UNITED STATES DISTRICT COURT

7 EASTERN DISTRICT OF CALIFORNIA

8
9 JOSEPH C. SPENCER,

CV F 01-6066 OWW SMS HC

10 Petitioner,

ORDER DIRECTING PETITIONER TO
INDICATE HOW HE WISHES TO PROCEED
WITH ACTION

11 v.

12 C. A. LAWHORN,

13 Respondent.
14 _____/

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16 Petitioner filed the instant case on August 17, 2001, as a petition for writ of habeas corpus
17 pursuant to 28 U.S.C. § 2254. Petitioner paid the \$5.00 filing fee on October 10, 2001. By order
18 of February 11, 2002, the petition was dismissed, with leave to file an amended petition. After
19 several extensions of time, Petitioner filed an amended petition, which challenged the
20 circumstances of his parole hearing which was held in Humboldt County, located within the
21 venue of the United States District Court for the Northern District of California. Therefore, by
22 order of October 24, 2002, the action was transferred to the Northern District of California.

23 After the transfer order was issued, Petitioner filed several documents in this Court,
24 including an application to proceed in forma pauperis, an amended complaint, and a motion to
25 amend the complaint, which were forwarded to the Northern District of California. The Northern
26 District reviewed the amended complaint which was docketed in that court on December 3, 2002,
27 and determined that Petitioner is challenging the conditions of his confinement at Avenal State
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Prison. The action was therefore transferred back to this Court on July 12, 2004.¹

Because this action was initially filed as a petition for writ of habeas corpus seeking to challenge the execution of his sentence versus the conditions of his confinement, it is unclear what relief Petitioner is attempting to pursue. Petitioner is advised however that he may not challenge both the execution of his sentence and the conditions of his confinement in this case. He must chose one or the other. Further, if Petitioner is seeking relief by way of a civil rights action filed pursuant to 28 U.S.C. § 1983, Petitioner must pay the \$150.00 filing fee for this action.² If Petitioner is unable to pay the \$150.00 filing fee, he may submit an application to proceed in forma pauperis.

Based on the foregoing, it is HEREBY ORDERED that:

1. Within thirty (30) days from the date of service of this order, Petitioner shall file a response indicating how he wishes to proceed with this action and if he wishes to proceed pursuant to 28 U.S.C. § 1983, pay the appropriate filing fee or submit an application to proceed in forma pauperis;
2. The Clerk of Court is directed to forward an application to proceed in forma pauperis to Petitioner; and
3. The failure to comply with this order will result in a recommendation that this action be dismissed for failure to comply with a court order. Local Rule 11-110.

IT IS SO ORDERED.

Dated: May 19, 2005
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/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

¹ That order indicates that Petitioner has since been released from custody and has provided the court with an address in Scotia, California in Humboldt County.

² The statutory filing fee for all civil actions except applications for writs of habeas corpus is \$150.00. See 28 U.S.C. § 1914(a). The Court notes however that effective February 7, 2005, the filing fee has been increased to \$250.00. However, because this action was filed prior to February 7, 2005, the filing fee remains \$150.00.